



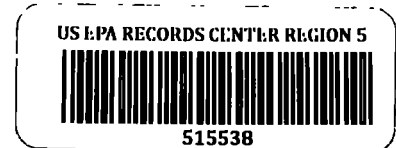
**STATE OF MINNESOTA**  
OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III  
ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO  
ATTORNEY GENERAL'S OFFICE  
POLLUTION CONTROL DIVISION  
1935 WEST COUNTY ROAD B-2  
ROSEVILLE, MN 55113  
TELEPHONE (612) 296-7342

July 14, 1983




Wayne Popham  
Popham, Haik, Schnobrich, Kaufman  
& Doty, Ltd.  
4344 IDS Center  
80 South 8th Street  
Minneapolis, Minnesota 55402

Re: U.S. v. Reilly Tar & Chemical Corp.  
File No. Civ. 4-80-469

Dear Mr. Popham:

Enclosed herewith and served upon you by U.S. Mail is  
State of Minnesota's Answer to Cross-Claim of City of St. Louis  
Park.

Very truly yours,

  
Stephen Shakman  
Special Assistant  
Attorney General

SS:mah

Enclosure

cc: All Counsel of Record

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its  
Attorney General Hubert H. Humphrey, III,  
its Department of Health, and its  
Pollution Control Agency,

Civil No. 4-80-469

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;  
HOUSING AND REDEVELOPMENT AUTHORITY  
OF ST. LOUIS PARK; OAK PARK VILLAGE  
ASSOCIATES; RUSTIC OAKS CONDOMINIUM  
INC.; and PHILIP'S INVESTMENT CO.,

Defendants.

and

STATE OF MINNESOTA'S  
ANSWER TO CROSS-CLAIM  
OF CITY OF ST. LOUIS PARK

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Plaintiff-Intervenor State of Minnesota for its answer to the Cross-Claim of Plaintiff-Intervenor City of St. Louis Park herein admits, denies, and alleges as follows:

1. Admits paragraphs 18 and 20 of the Cross-Claim.
2. Insofar as paragraph 19 of the Cross-Claim purports to summarize the Counterclaim of Defendant Reilly Tar & Chemical Corporation, the State alleges that the Counterclaim speaks for itself and refers the Court to the full text thereof.
3. Admits that at various times prior to the execution of the Agreement for Purchase of Real Estate and the Hold Harmless Agreement, St. Louis Park personnel consulted with Minnesota Department of Health (MDH) and Minnesota Pollution Control Agency (MPCA) personnel about the consequences of past pollution from Reilly Tar's operation; otherwise denies the allegations in paragraph 21 of the Cross-Claim.
4. Admits that Reilly Tar's termination of operations at its St. Louis Park plant in 1972 mooted certain claims for relief in the 1970 lawsuit brought jointly by St. Louis Park and the State against Reilly Tar; otherwise denies the allegations in paragraph 22 of the Cross-Claim.
5. Denies the allegations in paragraphs 23 and 24 of the Cross-Claim.
6. Except as expressly admitted, denied, or otherwise qualified hereinabove, denies each and every allegation, matter, fact, and thing contained in the Cross-Claim.

FIRST SEPARATE DEFENSE

7. The Cross-Claim fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

8. This suit is brought by the State in its sovereign, governmental capacity to protect public health, welfare, natural resources, and the environment.

9. The Cross-Claim is barred because neither estoppel nor any other preclusion may be invoked against the State when suing in its sovereign, governmental capacity to protect public health, welfare, natural resources, and the environment.

THIRD SEPARATE DEFENSE

10. Any representation made to St. Louis Park personnel by MDH or MPCA personnel was made in the performance of a discretionary duty.

11. The Cross-Claim is barred because neither estoppel nor any other preclusion may be invoked against the State on the basis of a State employee's performance or failure to perform a discretionary duty.

FOURTH SEPARATE DEFENSE

12. Any representations by MPCA or MDH personnel cited in paragraph 21 of the Cross-Claim were beyond the scope of the State employee(s)' duty and not authorized by the MPCA or the MDH.

13. There can be no estopped or other preclusion against the State or its agencies based upon State employees' statements

which were outside the scope of the employees' duty and not authorized by the agencies.

FIFTH SEPARATE DEFENSE

14. Prior to the execution of the Hold Harmless Agreement, St. Louis Park had equal or greater knowledge than the State, and equal or greater access to knowledge, of the facts with respect to ground water contamination emanating from the Reilly Tar site.

15. The Cross-Claim is barred because there can be no estoppel or other preclusion between parties as to facts which were equally known by or equally accessible to both parties.

SIXTH SEPARATE DEFENSE

16. No false representation of material fact was knowingly made to St. Louis Park personnel by MDH or MPCA personnel.

17. The Cross-Claim is barred because there can be no estoppel or other preclusion where the party to be estopped did not knowingly make a false representation of material fact.

SEVENTH SEPARATE DEFENSE

18. Counsel for St. Louis Park was informed by counsel for the State, immediately prior to the execution of the Hold Harmless Agreement by St. Louis Park, that no dismissal of the State's action against Reilly Tar would be considered until such time as the MPCA had received and reviewed a proposal for eliminating potential pollution hazards at the Reilly Tar site.

19. The Hold Harmless Agreement was executed by St. Louis Park without the knowledge of the State, prior to submission

by Reilly Tar or by St. Louis Park to the MPCA of any proposal for eliminating potential pollution hazards at the site, and prior to any review or approval of such a proposal by the MPCA.

20. If, contrary to paragraph 20 of the Cross-Claim, the Hold Harmless Agreement was and is broad enough to cover the present ground water contamination claims of the State, St. Louis Park's Cross-Claim against the State is barred because of St. Louis Park's assumption of the risk.


WHEREFORE, the State of Minnesota prays that the Cross-Claim of the City of St. Louis Park be dismissed and that the State of Minnesota be awarded the costs and disbursements expended on defense of the Cross-Claim.

Dated: July 14, 1983

HUBERT H. HUMPHREY, III  
Attorney General

Paul G. Zerby  
Special Assistant Attorney General  
136 University Park Plaza Building  
2829 University Avenue S.E.  
Minneapolis, MN 55414

Dennis M. Coyne  
Lisa R. Tiegel  
Special Assistant Attorneys General

By:   
Stephen Shakman  
Special Assistant  
Attorney General

Attorneys for Plaintiff-Intervenor  
State of Minnesota  
1935 W. County Road B-2  
Roseville, MN 55113  
(612) 296-7342